

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2000-EC-012 Issued November 9, 2000

The Arkansas Ethics Commission has received a written advisory opinion request from Representative Mike Hathorn regarding whether a candidate may use campaign funds as the source of a contribution to a *coordinate campaign for other races*.

It is the Commission's understanding that a "coordinate campaign" is not the campaign of a specific candidate but rather a fund established by a political party to assist in the election of the party's candidates. Contributions to the fund are treated as contributions to the party itself.

Accordingly, the question presented is whether or not a candidate may use his or her campaign funds to make a contribution to a political party.

The Ethics Commission has previously issued two advisory opinions that addressed the related question of whether a candidate may use his or her campaign funds to make a contribution to another candidate. In Advisory Opinion No. 92-EC-013, the Commission concluded that it was an "improper use of campaign funds...for a candidate to contribute campaign funds to another's candidacy." In reaching that conclusion, the Commission found that the making of such a contribution constituted a personal use of campaign funds.

In Advisory Opinion No. 97-EC-001, the Commission revisited the issue in a different context and found that in situations where a candidate purchases a ticket to a fund-raising event for another candidate, the primary purpose of attending the event is not personal but rather to further his or her own campaign. As such, a candidate may use campaign funds to purchase tickets to a fundraising event for another candidate. Accordingly, the Commission modified its previous opinion and held that each situation would be reviewed on a case-by-case basis. A rebuttable presumption was established that the use of campaign funds as a source of funding for a contribution to another candidate is prohibited as a personal use of campaign funds.

The use of campaign funds to make a contribution to another candidate's campaign was subsequently addressed in the Commission's Rules on Campaign Finance & Disclosure. Section 209(f) of those Rules provides, in pertinent part, as follows:

Generally, campaign funds may not be used to make a contribution to another candidate's campaign. Contributions are construed as a personal matter and transferring a contribution from one campaign to another person's campaign is considered a "personal use" of the funds. However, this general rule is a rebuttable presumption. There could be times and circumstances when a candidate may attend a fund raiser for another candidate and the purpose of attending would be to further the candidate's own campaign. Therefore, buying a ticket to the fund raiser would be permitted. Factual circumstances thus may indicate a need to deviate from the general rule that campaign contributions are personal uses of funds.

The Commission concludes the same analysis should be applied to contributions by a candidate to a political party. Accordingly, the Commission holds that a candidate is generally prohibited from using his or her campaign funds to make a contribution to a political party.

A candidate may use campaign funds to purchase tickets to fundraising events sponsored by a political party pursuant to Sec. 221(a) of the Rules on Campaign Finance & Disclosure.

The presence of a candidate at such an event increases his or her public visibility and serves a legitimate campaign purpose. A candidate must, however, make all reasonable efforts to attend the event.

Although a candidate is generally prohibited from using campaign funds to fund a contribution to a political party, the Commission notes there is no such prohibition with respect to carryover funds¹ or surplus campaign funds.² Pursuant to Ark. Code Ann.

¹ In accordance with Ark. Code Ann. § 7-6-201(3), a candidate who ends an election with campaign funds remaining may retain as "carryover funds" an amount not exceeding the annual salary of the office sought.

² Pursuant to Ark. Code Ann. § 7-6-201(16), "surplus campaign funds" is defined to mean:

any balance of campaign funds over expenses incurred as of the day of the election except for:


- (A) Carryover funds; and
- (B) Any funds required to reimburse the candidate for personal funds contributed to the campaign or to repay loans made by financial institutions to the candidate and applies to the campaign.

§ 7-6-203(j)(1) a candidate is required to dispose of his or her surplus campaign funds within thirty (30) days following the end of the month in which the general election is held.

There are four permissible methods set forth in Ark. Code Ann. § 7-6-703(j)(1)(A)-(D) for disposing of such funds. One such method of disposing of surplus campaign funds is to turn them over to an organized political party.³ Pursuant to § 227(a) of the Commission's Rules on Campaign Finance & Disclosure, a person with carryover funds is specifically authorized to dispose of carryover funds in the same manner as surplus campaign funds. Accordingly, both surplus campaign funds and carryover funds may be used to make a contribution to a political party.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

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³ The term "organized political party" is defined in Ark. Code Ann. § 7-1-101(16) to mean:

any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.